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No. 83-5999

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1983

KEVIN WINSTON OSBORN,

Petitioner,

v.

THE STATE OF WYOMING,

Respondent.

ON APPEAL FROM THE
SUPREME COURT OF WYOMING

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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I.

ISSUES INVOLVED AND NATURE OF THE CASE

A. ISSUES

The issues raised are:

I. DOES DUE PROCESS OF LAW OR THE PRINCIPLE THAT A DEFENDANT IS ENTITLED TO A FAIR TRIAL REQUIRE THAT A TRIAL COURT FREELY PERMIT THE WITHDRAWAL OF A GUILTY PLEA IN A DEATH PENALTY CASE?

II. DID THE TRIAL COURT UTILIZE THE PROPER STANDARD FOR DETERMINING COMPETENCY AT THE TIME THE PLEA WAS ACCEPTED AND AT THE TIME IT REFUSED TO ALLOW WITHDRAWAL OF THE GUILTY PLEA?

III. DID THE WYOMING SUPREME COURT CONDUCT ITS PROPORTIONALITY REVIEW IN A MANNER CONSISTENT WITH GOVERNING CONSTITUTIONAL PRINCIPLES?

B. PROCEEDINGS

The Petitioner pled guilty to the crime of first degree murder which was committed during the perpetration of the robbery of Jimmy Ray O'Briant. These crimes were committed on May 14, 1982. Prior to arraignment on these charges, the Petitioner was given notice by Respondent that it would seek the death penalty for the felony murder of O'Briant. The lengthy, detailed arraignment procedure took place on August 23, 1982. At the arraignment, the Petitioner was given a thorough explanation of the charges against him, the possible penalties for those crimes, and the effect of a guilty plea. Petitioner was asked if he was under the influence of alcohol or drugs and he replied that he was not. Petitioner's counsel did call to the attention of the Court that Petitioner was taking prescribed medication (librium and percodan) and that those medications posed no problem insofar as the proceedings were concerned. The trial court found the pleas of guilty entered at that proceeding to have been made, ". . . freely, voluntarily, and because he is guilty as charged, and not out of ignorance, fear, inadvertence, or coercion, and with full understanding of its consequences."

Sentencing was scheduled for October 13, 1982. On September 21, 1982, Petitioner filed a motion to withdraw

his guilty plea, asserting as a basis therefor that the plea was made while he was under the influence of drugs and thus involuntary. A similar motion was filed on Petitioner's behalf by the American Civil Liberties Union on October 4, 1982. A lengthy hearing was held on the motion to withdraw on October 13-14, 1982. At the conclusion of that hearing, the motion to withdraw was denied. Immediately following that hearing, a hearing on imposition of the death penalty was conducted and evidence in aggravation and mitigation was heard by the trial court, sitting without a jury, in accordance with Wyoming law. At the conclusion of that hearing, the Petitioner was sentenced to death. Petitioner appealed to the Wyoming Supreme Court, raising as issues, inter alia, the issues raised in this petition. The Wyoming Supreme Court affirmed the Judgment and Sentence of the trial court including the imposition of the death penalty. A more detailed statement of the proceedings is found at pp. 9-15 of the Wyoming Supreme Court's opinion attached as an appendix to Petitioner's brief.

C. ARGUMENTS.

I.

THE DISTRICT COURT PROPERLY REFUSED TO PERMIT WITHDRAWAL OF THE GUILTY PLEA.

Petitioner asserts that the Wyoming Supreme Court should apply a more stringent standard (and so should the district court) in a death penalty case in determining whether to allow withdrawal of a guilty plea before sentencing. In essence, this was done. The district court conducted a meticulous and exhaustive arraignment which afforded Petitioner every protection known to criminal law jurisprudence. It is evident from the transcript of that arraignment that the district court was very much aware that extra precautions were necessary to protect the Petitioner who faced the death penalty as a possible penalty. (Appendix "A"; transcript of arraignment).

On appellate review the Wyoming Supreme Court gave careful and detailed consideration to Petitioner's assertion that withdrawal of the guilty plea should have been allowed. The Wyoming Supreme Court applied legal principles and case law from criminal cases that did not involve imposition of the death penalty, but that is not to say that due

consideration was not given to the gravity of the potential penalty involved in this case.

What Petitioner is arguing for is a rule which would be that a guilty plea should not be accepted in a death penalty case because "due process" and "fair trial" standards can never be served by such a plea; or that if a guilty plea is entered, it may be withdrawn freely prior to sentencing. Either rule would have the same result, because what meaning would a guilty plea have under the later circumstances?

In this case the voluntariness of Petitioner's plea was carefully weighed, in the context of the death penalty, both at the time the plea was received and at the time withdrawal was requested. The Wyoming courts considered all of the grounds for allowing withdrawal and found none which would require a finding that a plausible reason for withdrawal existed or that "fairness and justice" required withdrawal. The application of the guilty plea in a capital case is recognized in Wyoming case law. State v. Best, 44 Wyo. 383, 12 P.2d 1110 (1932). Some state statutes and rules deal specifically with the subject. See, 21 Am.Jur.2d Criminal Law, §486, (fns. 31-34).

The Petitioner asserted in the Wyoming courts the rather narrow issue of withdrawal of his guilty plea based on involuntariness due to drug ingestion. The Wyoming courts went beyond that narrow issue and considered the

spectrum of issues that impact on the guilty plea process. The courts quite accurately concluded that refual to permit withdrawal of the plea is compatible with Wyoming case law and parallel federal case law. See, Annot., 6 A.L.R.Fed. 665, "Change of Plea - Before Sentence," (1971); Osborn v. State, supra, slip opinion pp. 15-21; Cf. Fair v. Zant, 715 F.2d 1519, 1520-22 (11th Cir. 1983); Moore v. Balkcom, 716 F.2d 1511, 1525-26 (11th Cir. 1983).

II.

THE TRIAL COURT APPLIED APPROPRIATE STANDARDS IN MAKING ITS DETERMINATIONS OF COMPETENCY.

Respondent does not recognize this issue as having been raised at any point in the proceedings below. No such issue was raised at arraignment when Petitioner pled guilty, it was not raised at the hearing when Petitioner's motion to withdraw his guilty plead was heard, and it was not raised, even obliquely, before the Wyoming Supreme Court. For this reason, it should not be considered in this proceeding either.

However, even if this issue is given substantive consideration it may be quickly disposed of. Petitioner is apparently arguing that before a guilty plea can be accepted a defendant must be reexamined by medical experts in order to determine that he is competent to plead guilty as opposed to competent to stand trial. Petitioner bootstraps this argument by simply concluding ". . . that his mental attitude required hospital evaluation and that he was on medication." The Petitioner's "mental attitude" was never put in issue until this petition, but in any event his "mental attitude" was the primary subject of the arraignment. The trial court's main purpose was to insure

that the Petitioner's plea was "voluntary" - voluntary in every sense that powerful word can imply:

> voluntary/'val-en-ter-e/adj [ME, fr. L volunarius, fr. voluntas will, fr. velle to will, wish - more at WILL] 1: proceeding from the will or from one's own choice or consent 2: unconstrained by interference: SELF-DETERMINING 3: done by design or intention: INTENTIONAL (manslaughter) 4: of, relating to, subject to, or regulated by the will (behavior) 5: having power of free choice (man is a agent) 6: provided or supported by voluntary action (a hospital) 7: acting or done of one's own free will without valuable consideration or legal obligation - voluntarily adv - voluntariness n.
> syn VOLUNTARY, INTENTIONAL, DELIBERATE, WILLFUL shared meaning element: done or brought about of one's own will. ant involuntary, instinctive.

Webster's New Collegiate Dictionary, P. 1303 (1979).

Petitioner drops the names of many well-known decisions that deal with issues that have an impact on the concept of voluntariness. It is possible to create confusion where there is none if those cases are applied without regard for the competing interests with which those cases deal (See pages 14-15 of the petition). What the district court determined was that the guilty plea was voluntary. It can be readily inferred that this determination was the greatest of the many determinations that the district court was called upon to make. And application of a process that resembles Boolean logic requires a conclusion that if Petitioner was competent to plead guilty to a death penalty

offense, he was competent for all lesser purposes. Petitioner turns this whole process on its head and argues that the only finding made by the trial court was that Petitioner was competent to stand trial, and therefore, these greater determinations (e.g., competent to plead guilty) will not follow. The record amply supports the conclusion that the opposite is true, i.e., the trial court made the greater finding and not the lesser.

III.

THE WYOMING SUPREME COURT's PROPORTIONALITY REVIEW WAS CONSISTENT WITH THE U.S. SUPREME COURT'S PRONOUNCEMENTS ON THE SUBJECT.

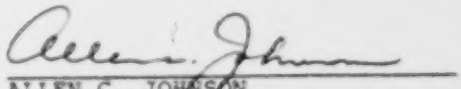
Petitioner relies upon what he perceives to be a disparity in the treatment he received as compared to his codefendant. Petitioner claims the prosecution did nothing to counter his claim at trial that imposition of the death penalty was disproportionate. Of course, there is no such burden placed on the prosecution. What the prosecution must do is to present sufficient evidence to prove, beyond a reasonable doubt, that certain aggravating circumstances exist. It is then the defendant's burden to show by some evidence that some mitigating circumstances exist. The burden is then on the prosecution to demonstrate and convince the fact-finder that the aggravating circumstances outweigh the mitigating. Disparate sentences among codefendants does not establish a prima facie case of disproportionality that amounts to denial of equal protection of the laws. Petitioner focuses on the crime only, whereas the statutory focus is on the criminal and the crime. The record in this case amply supports the conclusion that when Petitioner and his crimes are focused upon, he is a fit candidate for the death penalty. When

that same focus is placed on his codefendants (although the record is not as complete as it should be to make such a comparison) there is a rational basis for differentiating between Petitioner and his codefendants. Petitioner was the one who inflicted the mortal wounds on O'Briant; he was the ringleader of this group, he had plead guilty to committing another first-degree murder, he was under sentence of imprisonment (and on escape), at the time these instant crimes were committed. This provides a rational basis for differentiating between the Petitioner and his codefendants.

Petitioner's assertions are dependent upon a too simplistic conceptualization of the proportionality review. It is readily apparent from the Wyoming Supreme Court's opinion that our highest appellate court conducts a complete and multifaceted review that it articulates in its opinion. (See pp. 23-27 and pp. 31-32 of the slip opinion.) Many state courts do not go this far. There is no constitutional imperative to do so. The states are largely left to chose whatever method of review they wish so long as a proportionality review is conducted meaningfully. Unquestionably, Wyoming has chosen a meaningful review mechanism and one which exceeds those employed by other states. Under the facts of this case, the penalty of death was proportionate to the criminal and the crime. See, California v. Ramos, __U.S.__, 103 S.Ct. 3446, 3451-53, 77 L.Ed.2d. 1171, 1180-81 (1983); Moore v. Balcom, 716 F.2d 1511, 1518 (11th Cir. 1983).

For the reasons set out above, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,



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PROOF OF SERVICE

I, Allen C. Johnson, hereby certify that on the 12th day of January, 1984, I served true and correct copies of the foregoing BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI, by hand delivering same to the Wyoming Supreme Court, and by placing same in the United States Mail, postage prepaid, to Leonard D. Munker, Wyoming Public

Defender, Second Floor, Ellery Building, 1712 Carey Avenue, Cheyenne, Wyoming 82002.

ALLEN C. JOHNSON
Senior Assistant
Attorney General
ATTORNEY FOR RESPONDENT

APPENDIX A

IN THE DISTRICT COURT, THIRD JUDICIAL DISTRICT

COUNTY OF SWEETWATER, STATE OF WYOMING

STATE OF WYOMING	)	
	)	
vs.	)	CRIMINAL NO. 4266
	)	UINTA COUNTY NO. 4287
KEVIN WINSTON OSBORN	)	

ARRAIGNMENT AND PLEA

DATE: August 23, 1982 Monday TIME: 11:45 A.M.

PROCEEDINGS WERE HAD BEFORE THE HONORABLE KENNETH G. HAMM, JUDGE IN AND FOR THE THIRD JUDICIAL DISTRICT, COUNTY OF SWEETWATER, STATE OF WYOMING.

FILED
DONALD A. BROWN
OCT 4 - 1982

APPEARANCES

MR. ROBERT J. REESE, Deputy County and Prosecuting attorney, Box 157, Green River, Wyoming, appearing on behalf of the State of Wyoming.

MR. JERE RYCKMAN, County attorney, Box 724, Green River, Wyoming, appearing on behalf of the State of Wyoming.

MR. SCOTT W. SMITH, Deputy County and Prosecuting attorney, Uinta County, Box 580, Evanston, Wyoming, appearing on behalf of the State of Wyoming.

MR. LEONARD D. MUNKER, State Public Defender, Box 712, Cheyenne, Wyoming, 82001, appearing on behalf of the defendant.

MR. MIKE BURY, from the Office of Probation and Parole, State of Wyoming.

WHEREUPON, the following proceedings were had:

THE COURT. These are arraignments in Criminal docket number 4266, the State of Wyoming versus Kevin Winston Osborn, in Sweetwater County, and Criminal docket number 4287, Uinta County, the State of Wyoming versus Kevin Winston Osborn. Will the defendant and his attorney please stand at the lectern.

(WHEREUPON, the defendant, Kevin Winston Osborn, did stand at the lectern with his attorney, Mr. Leonard Munker, after which the following was had:)

THE COURT: Is Kevin Winston Osborn your correct name?
MR. OSBORN: Yes, sir.
THE COURT: Have you been served with a copy of the information filed against you in both of these cases?
MR. OSBORN: Yes, sir.
THE COURT: Are you under the influence of alcohol or drugs or suffering from any mental defect which could affect your ability to understand these proceedings and to enter an intelligent, competent and voluntary plea to the charges against you?
MR. OSBORN: No, sir.
THE COURT: Now, the purpose of this arraignment is to explain the charges and your constitutional rights, to answer any questions you might have, to find out if you understand what's going on and to ask whether you are ready to plead one way or another, that is, guilty or not guilty. Now, the essential portions of the information filed against you in Sweetwater County, Criminal docket number 4266 are that:

KEVIN WINSTON OSBORN, on the 15th day of May, 1982, at the County of Sweetwater, in the State of Wyoming did:

Count I

in the perpetration of the robbery of Audrey Ditmars and Dale Moore, unlawfully and feloniously participated by aiding and abetting Terry Lee Green and others, in the unlawful stangulation of Audrey Ditmars at a location known as the Point of Rocks, Sweetwater County Wyoming, in violation of §6-4-101, W.S. 1977, MURDER IN THE FIRST DEGREE.

Count II

MR. REESE: Your Honor, that should read that Kevin Winston Osborn unlawfully--
THE COURT: You wish to amend it?
MR. REESE: Yes, Your Honor.
THE COURT: Okay, it's so amended. The "I" will be changed to Kevin Winston Osborn,

unlawfully and feloniously was a participant in an attempt to kill with premeditated malice, by stabbing

Dale Moore at a location known as Point of Rocks in Sweetwater County, Wyoming, in violation of §6-1-201(a)(i), W.S. 1977, ATTEMPTED FIRST DEGREE MURDER.

Count IV

did unlawfully, forcibly, feloniously participate in the aggravated robbery of Dale Moore by threats and actual force resulting in multiple stab wounds, take from Dale Moore valuables belonging to him in violation of §6-4-402 W.S. 1977, AGGRAVATED ROBBERY.

And in the Uinta County charges, case number 4287, the essential portion of the information reads:

KEVIN WINSTON OSBORN--

MR. MUNKER: Judge, just a moment, let me get that out so we have that before us. Okay, he has it in front of him; go ahead.

THE COURT: All right.

KEVIN WINSTON OSBORN, on the 14th day of May, 1982, at the County of Uinta, in the State of Wyoming did unlawfully:

Count I

Conspire with three others, three other persons, to wit: Willard Eugene Teel, Ellen Duncan Hopkins, and Terry Lee Green, to commit the crime of aggravated robbery, which is a violation of §6-4-402, and committed an overt act to effect the object of conspiracy in violation of §6-1-203, W.S. 1981.

Count II

forcibly and feloniously take $15.20, a pair of cowboy boots and a pocket knife from the person or possession of Jimmy Ray O'Briant by putting in fear, and by exhibiting a knife in the commission of an aggravated robbery in violation of §6-4-402, W.S. 1977.

Do you wish to amend that count too?

MR. SMITH: Yes, Your Honor, I would move the Court at this time to change the line of the original, the fourth line page two of the original information, to simply reflect that it is an aggravated robbery.

THE COURT: All right, it is permitted.

Count III

From the perpetration and aggravated robbery kill another human being, to wit: Jimmy Ray O'Briant, in violation of §6-4-101, W.S. 1977.

Now, the crime with which you are charged in Sweetwater County, Count I, calls for a possible penalty of

life or death. Count II, that of attempted first degree murder, calls for a possible penalty of life. Count IV, aggravated robbery, calls for a possible penalty of fifty years. The possible penalties of the crimes alleged to have been committed in Uinta County, Count I, conspiraby, fifty years is the possible penalty. Count II, aggravated robbery, fifty years. Count III, life or death.

Now, the prosecutor in Uinta County has filed a notice of the state's intent to seek the death penalty.

> Comes now, the State of Wyoming, by and through its attorney, Scott W. Smith, hereby places all parties on notice, the State intends to seek the death penalty against the above named defendant, pursuant to W.S. 6-4-102, W.S. 1977, for the first degree felony murder of Jimmy Ray O'Briant, for the following reasons: (1) the murder of Jimmy Ray O'Briant was committed by Kevin Winston Osborn while he was under a sentence of imprisonment. The defendant was sentenced to serve a term in the Kilby Correctional Center located in Montgomery, Alabama, for a term of fifteen years for the crimes of robbery and grand larceny. (2) The defendant was previously convicted of another murder in the first degree and has also been convicted of several other felonies involving threats and violence to people. (3) The defendant knowingly created a great risk of death to two or more persons. (4) The murder was committed while the defendant was engaged in the commission of a robbery. (5) The murder of Jimmy Ray O'Briant was especially atrocious, heinous and cruel. (6) The murder was committed for pecuniary gain.

Mr. Osborn, do you understand what the possible penalties are and these charges against you?

MR. OSBORN: Yes, sir.

THE COURT: What are they on this Sweetwater County Count I, murder in the first degree?

MR. OSBORN: Life or death, sir.

THE COURT: All right. Count II, attempted first degree murder?

MR. OSBORN: Life, sir.

THE COURT: Count IV, aggravated robbery?

MR. OSBORN: Five to fifty years, sir.

THE COURT: What did you say?

MR. MUNKER: Five to fifty years, Your Honor, is what he said.

THE COURT: And in Uinta County, Count I, conspiracy?

MR. OSBORN: Fifty years, sir.

THE COURT: Count II, aggravated robbery?

MR. OSBORN: Five to fifty years, sir.
THE COURT: Count III?
MR. OSBORN: Life or death, sir.
THE COURT: Do you understand the charges against you?
MR. OSBORN: Yes, sir.
THE COURT: Do you have any questions about them?
MR. OSBORN: No, sir.
THE COURT: I note that in Sweetwater County Mr. Osborn's last name is spelled with an O-S-B-O-R-N, and in Uinta County it's O-S-B-O-R-N-E, which is it?
MR. OSBORN: O-S-B-O-R-N, sir.
THE COURT: The E is not part of it?
MR. OSBORN: No, sir.
THE COURT: All right. We'll amend the information in Uinta County to eliminate the E.

You understand the charges?

MR. OSBORN: Yes, sir.
THE COURT: And the possible penalties?
MR. OSBORN: Yes, sir.
THE COURT: Do you have any questions about them?
MR. OSBORN: No, sir.
THE COURT: All right. Your constitutional rights are that you may plead not guilty, not guilty or not triable by reason of mental illness or deficiency, or with permission of the Court, nolo contendere, which means you do not contest the charge. You are presumed to be innocent which presumption follows you throughout the trial and the state must prove you guilty of the crimes charged beyond a reasonable doubt. To do that the state must produce witnesses and evidence. You may also produce witnesses and evidence and you may testify if you wish but you aren't required to. All witnesses including you who testify will do so under oath and be subject to cross-examination.

You have the right to appeal all errors of law. You need not incriminate yourself nor make any statement or answer any questions, and if you plead not guilty and are questioned or asked to be questioned, you may refuse to answer because any answers you give can and may be used against you. During any questioning you may stop answering at any time. You are entitled to a speedy and public jury trial or a trial before the Court, with the approval of the Court, and the consent of the state, and if you waive your right to a jury trial in writing. If you want a trial either to the court or a jury, you are entitled to one within one hundred and twenty days after the filing of the information against you if you are out of jail or within ninety days after the date of the filing of the information if you are in jail, unless you waive that right or unless the Court finds that you will not be substantially prejudiced in the presentation of your defense.

You are entitled to be represented by an attorney at every stage of the proceedings either at your own expense or if you are unable to afford one the Court can appoint an attorney for you. Let the record show that the defendant is being represented by Mr. Leonard Munker, the state public defender.

Have you appeared before a county judge or a district court commissioner?

MR. MUNKER: Judge Soule, that's correct, Your Honor.

THE COURT: Have you?

MR. OSBORN: Yes, sir.

THE COURT: How about on the Uinta County charges?

MR. SCOTT: He waived venue in Uinta County and waived his preliminary hearing in Sweetwater County.

THE COURT: Did you have a preliminary on the Sweetwater County charges?

MR. OSBORN: No, sir.

THE COURT: You waived that too?

MR. OSBORN: Yes.

THE COURT: Both as to Uinta County and Sweetwater County?

MR. OSBORN: Yes, sir.

THE COURT: And you've waived venue as to Uinta County?

MR. OSBORN: Yes, sir.

MR. MUNKER: At the preliminary hearing. He hasn't waived--

THE COURT: Preliminary what?

MR. MUNKER: He hasn't waived in this court, to this proceeding on Uinta County, and I think the Court's going to have to take up the venue waiver for purposes of Uinta County for the arraignment, Judge.

THE COURT: Do you waive the venue?

MR. OSBORN: Yes, sir.

MR. MUNKER: I ask the Court to explain that he can.

THE COURT: You have the right to be tried in Uinta County, and you can insist upon it if you want it, but you can waive that right and have the matter heard here.

MR. OSBORN: Yes, sir.

THE COURT: Do you understand that?

MR. OSBORN: Yes, sir.

THE COURT: And do you waive that right?

MR. OSBORN: Yes, sir.

THE COURT: Does he really understand that, Mr. Munker?

MR. MUNKER: Yes, sir, I've explained it to him.

THE COURT: All right.

MR. MUNKER: The only other thing, Judge, we've had a hearing as to competency on the charges in Sweetwater. We have not had that as it pertains to the charge of Uinta County. And I think the Court's going to have to address that particular issue. We have the report out of Evanston, and I think that report would apply to the Uinta County case also, the evaluation.

THE COURT: I believe so, it's very recent, isn't it?

MR. MUNKER: Yes, sir.

THE COURT: Yes. All right, have you talked to your attorney, Mr. Munker, Mr. Osborn?

MR. OSBORN: Yes, sir.
THE COURT: Are you satisfied with his representation of you up to this point?
MR. OSBORN: Yes, sir.
THE COURT: All right. I'm going to ask you now whether you are ready to plead but I must warn you if you plead guilty or nolo contendere you are admitting all the essential facts of the charge. You'd waive the right to the presumption of innocence, the right to remain silent, the right to a trial, to be confronted by witnesses and to cross-examine, and the state won't have to prove the charges. The only issue will be the disposition I make of the case. Furthermore, if you are on probation or parole for any other crime, that could be revoked and you could be compelled to serve that sentence in addition to any I might impose upon you. Also, if you plead guilty to a felony, and these are all felonies, you'd lose certain civil rights such as the right to vote and to occupy a position of public trust and so forth, and whether you plead guilty or not guilty you'd waive the right to object to the sufficiency of the papers charging you with this crime, or crimes rather, and if you plead guilty, you'd waive the right to object to the sufficiency of evidence allegedly obtained in violation of your constitutional rights. Do you understand all of that?
MR. OSBORN: Yes, sir.
THE COURT: Are you ready to plead?
MR. OSBORN: Yes, sir.
THE COURT: Have you been forced or threatened by anyone to plead one way or another?
MR. OSBORN: No, sir.
THE COURT: Is your plea voluntary and not the result of any threats or promises?
MR. OSBORN: Yes, sir.
THE COURT: Are you now on probation or parole?
MR. OSBORN: No, sir.
MR. MUNKER: He's an escapee, Your Honor.
THE COURT: What?
MR. MUNKER: He is an escapee of Alabama.
THE COURT: Is that correct?
MR. OSBORN: Yes, sir.
THE COURT: Are you making your plea after talking to your attorney?
MR. OSBORN: Yes, sir.
THE COURT: Now, if you plead guilty or nolo contendere do you understand that the Court will ask you questions about these charges which you will answer under oath, on the record, in the presence of your attorney, and those answers can be used against you in this case or in any prosecution for perjury or false statement?

MR. OSBORN: Yes, sir.

THE COURT: Now, plea or sentence bargaining and agreement between your attorney and the prosecution is permissible but it's not binding on this Court and the Court may reject that agreement. Do you understand that?

MR. OSBORN: Yes, sir.

THE COURT: Do you also understand that you have the right to plead guilty if you wish, or not guilty, even though your counsel may have admonished you, cautioned you about entering a plea of guilty?

MR. OSBORN: Yes, sir.

THE COURT: Anything further along those lines, Mr. Munker?

MR. MUNKER: Judge, I have prepared a petition that I have gone over with him.

THE COURT: Just one moment.

MR. MUNKER: Yes, sir.

THE COURT: Has there been any plea or sentencing agreement?

MR. REESE: Your Honor, as to the Sweetwater County charges there has been no plea agreement; however, in contemplation of the defendant's plea to Count I, we have in our amended information eliminated Count III because it related to the killing of the same person.

THE COURT: There has been no plea bargaining?

MR. REESE: No, Your Honor.

THE COURT: And has there been any with respect to Uinta County?

MR. SMITH: No, Your Honor.

THE COURT: Is that correct, Mr. Munker?

MR. MUNKER: Well, the only conversation and agreement was in regard to the death penalty and they initially advised me that they would seek the death penalty in this case in the event we requested a trial, and they persisted in that. They filed the aggravating circumstances and proper notice before the Court and in that regard there's none, Your Honor.

THE COURT: All right. Mr. Munker, you stated you had a--before I ask you how he pleads, guilty or not guilty, you stated that you wished to make a statement or the defendant wished to. Is the statement written?

MR. MUNKER: I have prepared a Petition to Enter a Plea of Guilty in the Sweetwater case. I'd ask that Mr. Osborn be sworn under oath. For the purpose of that he would have to be anyway, Your Honor. And I'll go ahead and read the preparation and I'm sure it overlaps with what this Court's going to ask him.

The State of Wyoming--I'll provide the Court with a copy of it so you can follow, Judge.

THE COURT: What?

MR. MUNKER: I say I'll provide you with a copy if you'd like.

THE COURT: You've got a signed copy?

MR. MUNKER: No, it's unsigned, Judge, but it will need to be signed.

THE COURT: There will be a signed copy filed. Okay.

MR. MUNKER: I'd ask that Mr. -- Pardon? (Discussion off the record between defendant and Mr. Munker.) I'd ask that he be sworn at this time, Your Honor.

THE COURT: Raise your right hand.

(WHEREUPON, the defendant, Kevin Winston Osborn, was sworn to truthfulness, after which the following was had:)

THE COURT: And I'm swearing you as to both the charges in Sweetwater County and Uinta County. Do you understand that?

MR. OSBORN: Understand.

THE COURT: Proceed, Mr. Munker.

MR. MUNKER: Thank you, Your Honor.

This is a petition in the State of Wyoming versus Kevin Winston Osborn. It's criminal number 4266. It's a Petition to Enter a Plea of Guilty and the Court's order is appended to it.

The defendant represents to the Court:

(1) My full true name is Kevin Winston Osborn. My date of birth is November 3, 1956. I'm twenty-five years of age. I have gone to school up to and including the eighth grade and have obtained a G.E.D. I request that all proceedings against me be in my true name.

And the Osborn is O-S-B-O-R-N.

(2) I am represented by Leonard D. Munker, State Public Defender, Cheyenne, Wyoming.

(3) I received a copy of the Information before being called upon to plead. I read the Information and I have discussed it with my lawyer. I fully understand every charge made against me, and have had the opportunity to propound questions to the Court (Judge Soule), and I have been provided a brief on the elements of felony murder, that I have had time to deliberate on my actions and have knowingly and voluntarily, with the understanding of the charges against me, waived my right to a preliminary hearing.

(4) I have discussed with my lawyer all the facts and circumstances known to me about the charges made against me in the Information. I believe that my lawyer is fully informed of all such matters.

(5) I know that the Court must be satisfied that there is a factual basis for a plea of guilty before my plea can be accepted. I represent to the Court that I

did the following acts in connection with the charges made against me in the counts.

I'm going to offer as evidence, these documents, Your Honor, and I ask that they be marked and entered in this case. It's a brief on the felony murder rule in this state and the Wyoming Supreme Court case, Cloman versus the state, 574, P.2d 410. He has had those available to him since he was in Evanston.

THE COURT: Mr. Munker, will you give them to the reporter please?

MR. MUNKER: Yes, sir.

THE COURT: Are they marked as one exhibit?

MR. MUNKER: Yes.

THE COURT: As one exhibit.

MR. MUNKER: I'd move that those documents, briefs be made part of the official record in this case, Your Honor.

THE COURT: Any objections?

MR. REESE: No objection, Your Honor.

MR. SMITH: No objection.

THE COURT: You may proceed.

MR. MUNKER: Count I

That in the perpetration of the robbery of Audrey Ditmars and Dale Moore, unlawfully and feloniously participated by aiding and abetting Terry Lee Green and others in the unlawful strangulation of Audrey Ditmars at a location known as Point of Rocks, Sweetwater County, Wyoming, a violation of 6-4-101, W.S. 1977, an offense known as murder in the first degree.

Count II

That I unlawfully and feloniously was a participant in an attempt to kill, with premeditated malice, by stabbing Dale Moore at a location known as Point of Rocks, Sweetwater County, Wyoming, in violation of §6-1-201(a)(i), W.S. 1977, an offense known as attempted first degree murder.

Did unlawfully, forcibly--this is count IV, Your Honor--and feloniously participate in the aggravated robbery of Dale Moore and that by threats and actual force, resulting in multiple stab wounds, take from Dale Moore valuables belonging to him in violation of 56-4-402, W.S. 1977, an offense known as aggravated robbery.

That I assume responsibility for my conduct to the above charged counts, that I acted either as a principal or an aider and abettor and was aware of the circumstances leading to the death of Audrey Ditmars, the stabbing of Dale Moore, and the aggravated robbery by taking his personal effects; that being informed of the charges and provided with a brief outlining the felony murder rule applicable to my case, I am satisfied that my oral statements in conjunction with the factual statements out-

lined herein will make a public trial unnecessary and my plea of guilty will be accepted by the Court. I reached this decision after having consulted with my attorney. I assume the responsibility for expediting this matter and requested my counsel to prepare this Petition to Plead Guilty. By pleading guilty, I am subjecting myself to the consequences which flow from this action, and it is my desire that the facts in this case be a basis for the imposition of the death penalty.

(6) My lawyer has counseled and advised me on the nature of each charge, on all lesser included charges, and on all possible defenses that I might have in this case; that it is his opinion that the death penalty is inapplicable, I say inapplicable to the facts in this case based upon the Supreme Court's opinion, Enmund v. Florida, decided July 2, 1982.

(7) I know that I have the right to plead not guilty to any offense charged against me. If I plead not guilty I know the constitution guarantees me (a) the right to a speedy and public trial by a jury; (b) at that trial, and at all stages of the proceedings, the right to the assistance of a lawyer; (c) the right to see and hear all witnesses called to testify against me, and the right to cross-examine those witnesses; (d) the right to use the power and process of the Court to compel the production of any evidence, including the attendance of any witnesses in my favor; and (e) the right not to be compelled to incriminate myself by taking the witness stand; and if I do not take the witness stand, no inference of guilt may be drawn from such failure.

(8) I know that if I plead guilty, I am thereby waiving my right to a trial, and that there will be no further trial of any kind, either before a Court or jury; and further, I realize the Court may impose the same punishment as if I had pleaded not guilty, stood trial, and been convicted by a jury. I am further advised that my plea of guilty waives all nonjurisdictional defects and the possibility of habeas corpus review in the Federal Courts.

(9) I know that if I plead guilty, the Court will ask me questions about the offense(s) to which I have pleaded, and since I will be answering these questions under oath, on the record, and in the presence of my lawyer, that my answers may later be used against me in a prosecution for perjury or false statement.

(10) My lawyer informed me that the plea of guilty could subject me to a maximum punishment which, as provided by law, is life imprisonment on Count I, life imprisonment on Count II, and five to fifty years on Count IV.

(11) I declare that no law enforcement officer or agent, prosecutor or the Court, or my own counsel has made any promises, suggestions or inducement in an effort to obtain my plea of guilty; that at my request my counsel has acted as directed, that I knowingly waive my right to trial and that I request the maximum sentence be imposed for the offenses that I have committed.

I know that the sentence I will receive is solely a matter within the control of the Court. I do not request leniency, and I am prepared to accept the maximum punishment permitted by law which the Court sees fit to impose.

(12) My plea of guilty is made after consulting with my counsel and my desire to expedite this matter, and request the maximum permissible punishment. The prosecution, based upon my plea, is requested and agrees to seek the imposition of the death penalty. I have been advised that the Court may accept or reject this agreement. In the event the Court rejects this agreement, I understand that I will have the opportunity to withdraw my guilty plea.

(13) I believe that my lawyer has done all that anyone could do to counsel and assist me, and I am satisfied with the advice and help he has given me.

(14) I know that the Court will not permit anyone to plead guilty who maintains he is innocent and, with that in mind, and because I am guilty and do not believe I am innocent, I wish to plead guilty and respectfully request the Court to accept my plea of guilty.

(15) My mind is clear. I am not under the influence of alcohol or drugs, and I am not under a doctor's care.

Let me say at this point, Judge, he is taking Librium four times a day, 25 milligrams each time, for a total of 100 milligrams. He's taking Percodan for purposes of a tooth. I have called a physician in regard to the current dose that he is taking and I am advised that at that dose level there is no problem; that there are many, many people conducting business and taking whatever occurs in their life in a very normal manner, so I did check on that yesterday.

(15) continued-
I acknowledge I have been examined by the Wyoming State Hospital in July of this year, that I have read the reports and the conclusions therein, and further, I have been examined and counseled by Dr. Brian Miracle in July and August of this year.

He was examined yesterday afternoon by Dr. Miracle.

(16) I have been examined on at least two occasions by institutions treating mental illnesses. I have never been adjudicated mentally incompetent. No psychiatrist, physician or psychologist has ever found me to be mentally ill. I know of no reason why my mental competence at the time of the commission of the alleged offense(s), or at the present time, should be questioned.

(17) I offer my plea of guilty freely and voluntarily, and further state that my plea of guilty is not the result of any force or threats against me, or of any promises made to me other than those noted in this petition. I further offer my plea of guilty with full understanding of all the matters set forth in the information and in this petition, and in the certificate of my attorney which is attached to this petition.

(18) I swear that I have read, understood, and discussed with my attorney, each and every part of this Petition to Plead Guilty, and that the answers which appear in every part of this petition are true and correct.

It's to be signed in the presence of his attorney in open court, Your Honor, and I'll have him do that in a moment. There is a Certificate of Counsel:

The undersigned, Leonard D. Munker, State Public Defender, Cheyenne, Wyoming, as lawyer and counselor for the defendant, hereby certifies:

(1) I have read and fully explained to the Defendant the allegations contained in the information in this case.

(2) To the best of my knowledge and belief, the statements, representations and declarations made by the defendant in the foregoing petition are in all respects accurate and true.

(3) The defendant is in accord with my understanding of the facts presented to me by the prosecution and

and related to me by the defendant and that the plea is motivated by the defendant's desire to avoid a trial, obtain quick disposition of his case, and to seek the death penalty. He desires the maximum penalty and asks that I make this recommendation to the Court. The plea is knowingly, voluntarily, and accurate and meets the standards as I understand them. Further, the alternatives available to Kevin Winston Osborn have been outlined and those considerations he deemed important are set forth in this Petition to Plead Guilty. The trial judge has not been a participant in any plea discussions and the defendant has been advised that the Court is not bound in any way in the defendant's Petition to Plead Guilty or recommendations made by the prosecution.

(4) In my opinion, the defendant's waiver of his preliminary hearing in open court was voluntary and understandingly made and I recommend to the Court that the waiver be accepted.

(5) In the execution of my independent professional judgment, I have advised my client that I did not think that a death penalty would be possible on the information filed in Sweetwater County. I have reviewed the Code of Professional Responsibility, Canon 5, 6, and 7, and believe those Canons to be in conflict with the Supreme Court's ruling of Faretta v. California, 422 U.S. 806, as it pertains to this case and the death penalty statutes of the State of Wyoming.

(6) It is my opinion that the standards set forth in the Supreme Court's opinion of Dusky v. United States, 362 U.S. 402 (1959), have been met with this defendant that he is oriented to time, place, and event and has sufficient present ability to consult with his lawyer with a reasonable degree of understanding and has a rational and factual understanding of the proceedings against him.

Signed by me in open court in the presence of the defendant above named and after full discussion of the contents of this certificate with the defendant.

I'll date it, Your Honor, and sign it this 23rd day of August, 1982. (Mr. Munker signing document).

THE COURT: Mr. Osborn, how do you plead to Count I of the charges in Sweetwater County, murder in the first degree, guilty or not guilty?

MR. OSBORN: Guilty, sir.
THE COURT: To Count II, attempted first degree murder?
MR. OSBORN: Guilty, sir.
THE COURT: To Count IV, aggravated robbery, guilty or not guilty?
MR. OSBORN: Guilty, sir.
THE COURT: Before I can accept your plea I have to find out if you are pleading knowingly and intelligently under the precepts of Boykin versus Alabama, and the only way I can find that out is for you to tell me about it under oath so let's swear you again. Raise your right hand.

(WHEREUPON, the defendant, Kevin Winston Osborn, was sworn to truthfulness, after which the following was had:)

THE COURT: All right. Let's start with the 15th day of May, the date of most of these charges. What happened, start from the beginning.
MR. OSBORN: We was traveling, sir, and we stopped in Evanston at the--
THE COURT: Speak a little louder into the microphone if you will.
MR. OSBORN: We was traveling and we stopped in Evanston at a motel and while Miss Hopkins went inside to sign for a room.
THE COURT: Who's we?
MR. OSBORN: Myself, Terry Green, Willard Teel, and Ellen Hopkins. While Miss Hopkins was in the room, inside the motel registering for a room--
THE COURT: I'm not asking you about that, I'm asking you about what happened in Sweetwater County. I'll get to that later.
MR. OSBORN: We was traveling down the interstate. There was a car stopped on the side of the road and I stopped to try to help the people, and the guy said he needed some help so I asked him, told him he had to ride in the back of the truck because the front of the truck was full. He agreed so I had--I put him in the back of the U-haul truck. I got in the truck and we started down the interstate towards Little America, the truck stop they got there. And the subject come up of robbing him, so we all agreed to rob him. I stopped, pulled off the road, we stopped, and myself, Terry Green, Willard Teel went to the back of the truck, opened the doors and proceeded to hold a knife at Mr. Moore's throat, and tied him up. And I left Terry Green in the back with Mr. Moore, shut the door. Myself and Willard Teel got back into the truck and started back down the interstate again. So we started thinking about his mother; we left his mother in the car. So we went back and got her.

THE COURT: Why?

MR. OSBORN: Because she recognized the type vehicle we was in. And when I went back I got out of the truck and went up to the car and I asked Miss Ditmar, Ditmar, I told her that her son sent me back after her, that he was at the motel, that he couldn't get a wrecker until in the morning. And she agreed to go with us. She got in the front of the truck with myself, Miss Hopkins and Terry Green, I mean Eugene, Willard Teel. And as we started back down the interstate again Willard about told her the truth, that her son was tied up in the back of the truck and he was being robbed. The lady said there wasn't nothing she could do. So I stopped again and took her and I locked her and Terry Green--it was Terry Green, Willard Teel, her son, and her. All four was locked in the back of the truck and Miss Hopkins and I proceeded down the interstate again. I don't know how far we drove, 80, 90 miles, I don't know exactly, sir, and I stopped at a big truck stop, a rest area, and I let them out. When I let them out they come up to the front. That was Terry Green and Mr. Teel. They handed me the money and Terry Green told me that he had raped the lady and I said what, you know, what are we going to do with them. The subject come up to kill them, they could be eye witnesses. So Terry Green and Willard Teel went to the back of the truck and that's all I know that happened in the back of the truck.

THE COURT: You found out later what happened, didn't you?

MR. OSBORN: Yes, sir, they were--

THE COURT: What happened?

MR. OSBORN: Miss Ditmar was strangled to death and Mr. Moore's throat was cut three times.

THE COURT: Who strangled Mrs. Ditmars?

MR. OSBORN: The only thing I know, sir, is what's in the report. Terry said that he did it. I don't know, sir, I wasn't in the back of the truck.

THE COURT: Who cut the man's throat?

MR. OSBORN: Again, sir, I don't know for sure, just what's in the report. Mr. Teel said that he did it, that Terry held his head up and he slit, slit his throat.

THE COURT: All right, go on.

MR. OSBORN: About by seven thirty, well, it was getting daylight so we had to get rid of the bodies. We stopped, pulled off the road somewhere, I don't know where it was at, and when Terry opened the back of the truck to take the bodies out Mr. Moore jumped out and run. They proceeded to chase him and when they caught him they started stabbing him again.

THE COURT: Who's they?

MR. OSBORN: Mr. Teel and Mr. Green.

THE COURT: Where were you?

MR. OSBORN: I was at the truck with Miss Hopkins. I

went over later and when I got there they was through. The man he was limp, there wasn't no movement so we thought he was dead. He was too heavy to move, to pick up and carry, so we rolled him over in the ditch, covered him up with some grass. We got back to the U-haul truck, sir, and Terry Green and Mr. Teel started pulling the lady out of the back of the truck, Miss Ditmar. And while they was disposing of her body I had a blanket, wiping up the blood. I couldn't get all the blood up, it wouldn't wipe up so we threw dirt into the back of the truck, myself and Miss Hopkins to cover up the blood.

THE COURT: You put what in the back of the truck?

MR. OSBORN: To absorb the blood off the floor 'cause the blanket wouldn't wipe it up.

THE COURT: What did you use to try to wipe up the blood?

MR. OSBORN: A blanket, sir.

THE COURT: Oh, I see. All right.

MR. OSBORN: Then when they got through doing whatever they'd done with the lady's body they came back and we got in the truck and we left, sir.

THE COURT: Where did you all four get together?

MR. OSBORN: I left Florida about the first part of May, when I got off the fishing boat, I was working on a fishing boat and I started traveling. I met Mr. Teel in Oklahoma and picked him up hitchhiking.

THE COURT: Did you have a car?

MR. OSBORN: Pardon me, sir?

THE COURT: Did you have a car?

MR. OSBORN: No, sir, I was traveling in a U-haul truck. I was renting a U-haul truck to travel.

THE COURT: Did you rent it?

MR. OSBORN: That one, yes, sir, I did.

THE COURT: All right.

MR. OSBORN: And we started traveling, started talking and drinking and we seemed to get along real well, so we decided we'll go to California. We got to California and we went on Highway 101 up the coast, and that's when we picked up Miss Hopkins and Terry Green hitchhiking. And we all four seemed to get along well because none of us had a family. We was sort of a family of our own.

THE COURT: What did you do up in Oregon?

MR. OSBORN: We dropped another girl off that we had picked up hitchhiking. I don't remember her name, sir, she was going up to Canada.

THE COURT: Was there anybody with her?

MR. OSBORN: Yes, sir, it was a young guy with her.

THE COURT: What happened to him?

MR. OSBORN: Me and him got in an argument traveling down the interstate 'cause Mr. Teel was in the back of the truck with the girl he was with and he got pretty jealous

about it and he started cursing me, so when I stopped the truck I went around to the side of the truck and he got out and I slapped him a few times and left him sitting there.

THE COURT: Just slapped him?

MR. OSBORN: Well, hit him with my fists a couple of times, sir We got in a fight.

THE COURT: Was he all right when you left him?

MR. OSBORN: Sure he was all right.

THE COURT: All right. Then you drove from Oregon to where?

MR. OSBORN: We got to Portland, Oregon and that's where I let this other young lady off. We left there, started back east, sir, going through, we decided we'd go back to Florida.

THE COURT: How could all five of you fit in the cab of that U-haul?

MR. OSBORN: All five of us wasn't in the cab of the U-haul at the same time, most of us was in the back, sir.

THE COURT: All right, go on.

MR. OSBORN: Then we went through Washington, I think it was, and then Montana, Iowa. We just traveled back and forth through them states for a while.

THE COURT: How did you live?

MR. OSBORN: Pardon me, sir?

THE COURT: How did you live?

MR. OSBORN: Working, when I was working on the fishing boat, sir, I earned $4,500.00 from fishing, it was mackeral fishing.

THE COURT: You mean all of you lived on your money?

MR. OSBORN: At that time, yes, sir, until I got broke, 'till my money had run out. And then I think it was in Montana, that Terry snatched a pocketbook out of a roadside park.

THE COURT: He did what?

MR. OSBORN: Terry Green snatched a lady's pocketbook at a roadside park; we had stopped at a roadside park, and there was a credit card in there and we started using the credit card. That's how we lived from then until we got arrested.

THE COURT: Then you proceeded from there to where?

MR. OSBORN: We was on our way back to Florida, sir. We all decided to go back to Florida.

THE COURT: How did you get to Evanston, Wyoming?

MR. OSBORN: In a U-haul truck, sir.

THE COURT: On your way to Florida?

MR. OSBORN: Yes, sir.

THE COURT: You were an escapee I gather, from the penitentiary. Where were you incarcerated?

MR. OSBORN: In Wetumpka, Alabama.

THE COURT: Where?

MR. OSBORN: Wetumpka, Alabama.

THE COURT: What for?

MR. OSBORN: Armed robbery, grand larceny.
THE COURT: Both counts, both charges?
MR. OSBORN: Yes, sir.
THE COURT: What was your sentence?
MR. OSBORN: Fifteen years, sir.
THE COURT: No minimum?
MR. OSBORN: No, sir, they just give you a straight sentence there.
THE COURT: How long had you served?
MR. OSBORN: I spent twenty-two months in the county jail and I was in the penitentiary for six months.
THE COURT: How did you escape?
MR. OSBORN: They let me out the gate, they opened the gate for me.
THE COURT: Opened the gate for you?
MR. OSBORN: Yes, sir, it might sound pretty stupid to you but they did.
THE COURT: Did they know you were going to leave?
MR. OSBORN: No, sir. See, at the time I had custody and the warden, Mr. White, K.D. White, he called me in the office one Friday morning and he told me he says, son--I was in school at the time. He says son, he says if you bring the G.E.D., you're eighteen months short of parole. He said, I could send you to work release. And my sister and her husband owned their own business so I had a job there and they were waiting on me. It wouldn't have been no problem to be sent to the work release center. About two o'clock that day he called me back up there. There had been a hold in my jacket from the State of Louisiana the whole time I was locked up but they had overlooked it. And he told me, he says, Kevin he says, I'm sorry but I'm going to have to take you and put you back inside the fence. He had to run deopsitions, I guess that's what you call it, papers to all the guard checks that they had pulled my custody. So that night at six thirty, after church, I just acted like I was going to work, I was working at the Chicken House there and they didn't know no better, and they opened the gate for me and I walked out.
THE COURT: You mean there was somebody standing there with the gate open?
MR. OSBORN: No, sir.
THE COURT: Or was it just open?
MR. OSBORN: The gate was there, there was a guard tower there, a guard tower. When I went up to the gate I said, Osborn at the Chicken House, they knew I worked there, so they called inside the main controls and K.D. White, the warden, he hadn't warned the office that he had pulled my custody. He hadn't run depositions.
THE COURT: That is, they didn't let you out on purpose, I mean, knowing you were going to escape?
MR. OSBORN: No, sir.
THE COURT: They thought you were doing something legitimate.

MR. OSBORN: Yes, sir.
THE COURT: You're twenty five years old.
MR. OSBORN: Yes, sir.
THE COURT: Where are you from?
MR. OSBORN: Florida, sir.
THE COURT: Where at in Florida?
MR. OSBORN: I was born in Winterhaven, Florida, sir.
THE COURT: Winterhaven?
MR. OSBORN: Yes, sir.
THE COURT: Where are your parents?
MR. OSBORN: My mother and father live in Montgomery, Alabama.
THE COURT: Do they know where you are now?
MR. OSBORN: Yes, sir.
THE COURT: Have you talked to them, or have you seen them at all?
MR. OSBORN: We correspond through letters, sir. I've talked to them twice on the phone because my father's in the hospital.
THE COURT: What's the matter with him?
MR. OSBORN: Both of my parents got cancer. Last week I received a letter that he was in critical condition.
THE COURT: How much education have you had? How far did you go in school; let's put it that way?
MR. OSBORN: To eighth grade, sir.
THE COURT: And you got a G.E.D., where?
MR. OSBORN: In the penitentiary, sir.
THE COURT: Are you married?
MR. OSBORN: Divorced, sir.
THE COURT: Do you have any children?
MR. OSBORN: Yes, sir, I got a daughter.
THE COURT: Where are they?
MR. OSBORN: I have no idea, sir.
THE COURT: Where did you leave them?
MR. OSBORN: I didn't leave them. When I was in the penitentiary my wife got a divorce. She disappeared, I can't find them.
THE COURT: Is that the only prison--is that the only felony record you have?
MR. OSBORN: When I was growing up, charges of burglary, grand larceny, nothing real, nothing real serious, sir.
THE COURT: You don't think that's serious?
MR. OSBORN: It's serious, I mean nothing as serious as this, sir.
THE COURT: Were you ever imprisoned before?
MR. OSBORN: I was in a federal penitentiary, sir.
THE COURT: For what?
MR. OSBORN: Possession of government property.
THE COURT: Where did you get that? What was it?
MR. OSBORN: Fort Polk, Louisiana.

THE COURT: Fort what?
MR. OSBORN: Fort Polk, Louisiana.
THE COURT: What did you swipe?
MR. OSBORN: A safe.
THE COURT: A safe?
MR. OSBORN: Yes, sir.
THE COURT: Anything in it?
MR. OSBORN: $20,000.00, sir.
THE COURT: What did you steal, the safe or the money? What were you after?
MR. OSBORN: Pardon me, sir?
THE COURT: What were you after, the money or the safe?
MR. OSBORN: The money, sir.
THE COURT: But they put you in prison for stealing a safe, is that the idea?
MR. OSBORN: Yes, sir. They called it possession of government property because it was a year later. I had done spent the money.
THE COURT: You'd spent the money?
MR. OSBORN: Yes, sir.
THE COURT: What did you spend $20,000.00 on?
MR. OSBORN: Drugs, sir, mostly.
THE COURT: Are you a user of drugs?
MR. OSBORN: Yes, sir, I was strung out on the needle for a little over seven years.
THE COURT: What type of drug, heroin?
MR. OSBORN: Yes, sir.
THE COURT: Any other record, police or FBI record?
MR. OSBORN: No, sir.
THE COURT: Have you ever been in the service?
MR. OSBORN: No, sir.
THE COURT: Why did you do these things?
MR. OSBORN: Pardon me, sir?
THE COURT: Why did you do these things?
MR. OSBORN: At the time, sir, I can't use it for any excuse, but I was, I was on hallucinogenics, I was on some drugs. I didn't realize it was happening until it was over.
THE COURT: You seem to have a pretty good memory today. Mr. Reese, what evidence do you have concerning this case, the defendant and his record?
MR. REESE: Your Honor, according to information we received from the State of Alabama, the defendant, as early as 1975 was facing second degree burglary charges. He also has charges in that same year of larceny from a building, and grand larceny. In 1977 he has charges of being a fugitive and grand larceny in Florida, and the same charges in the same year from Alabama. In 1979 he was sentenced to Kilby Correctional Facility in the State of Alabama, fifteen years on a robbery charge, five years on the grand larceny charge and those were concurrent sentences. We also have information

from the defendant that after his escape he spent time in jail in both Florida and Arizona on various charges under a different name than he is currently using; a name other than his own.

As to the factual basis for the Sweetwater County charges, the matter began as the defendant stated in the early morning hours of May 15, 1982 in Sweetwater County, the Sheriff's office became informed of it when Dale Moore came into, on foot, to Point of Rocks. He had been, it was later determined he had been stabbed nineteen times. The Sweetwater County Sheriff's office all day long ran a check for the, based on the information they received from Dale Moore. They traced the U-haul vehicle to an area around Lyman and they eventually caught all four subjects in Laramie late in the afternoon of May 15. Moore stated that he had been disabled, his vehicle had been, in Sweetwater County, Wyoming and that the U-haul driven by Kevin Osborn had stopped and that he got in assuming that he was to receive assistance. In fact he was robbed at knife point of Canadian currency, approximately $100.00; U.S. currency, approximately $600.00, his Mastercard, a digital watch, and some other possessions that belonged to both him and his mother. While he was in the U-haul he realized that he was in danger. He scratched Dale Moore on the side of the U-haul truck. His name, that was later seen by detectives when they inventoried the truck. Mr. Moore described a particular ring leader which matched the description of Kevin Osborn. It seemed as if Mr. Osborn were in charge of everything. He stated that they later got his mother; that his throat had been slit several times. He was able to avoid actually dying from that because he kept the gag that he had gotten down around his neck. Both he and his mother, Audrey Ditmars, were bound and gagged. He heard a gurgling noise which he thought at the time was probably the death of his mother, Audrey Ditmars, by strangulation and he didn't hear anything else from her after that. He pretended to be dead. They attempted to strangle him, he made a noise that he thought was similar to that gurgling noise. They took him some distance in the truck. When they came to open the door, he attacked them with some shampoo and a makeshift weapon that he had devised with a string and a shoe. He got about fifty yards away based on that. At that point, according to Mr. Moore, all three males that were there stabbed him repeatedly and as I said, it turned out that he had nineteen stab wounds in him. Mrs. Ditmars cause of death was strangulation according to the coroner. Osborn, Teel, Green and Hopkins were later picked up in Laramie with the possessions belonging to Mrs. Ditmars and to Dale Moore among others. Osborn gave statements pretty much to the effect that he had been driving; that Teel and Green had slit the throat and done the stabbing and the strangulation. In fact, everybody--all the defendants seemed to

concur that Moore, Hopkins, or Teel, Hopkins, Osborn and Green were there; that Osborn drove all three vehicles that were involved in the Wyoming situation. According to Ellen Hopkins Osborn assisted in the stabbing of Moore. He helped cover up, just as he stated this morning; that in the initial part, when they saw the truck broken down Mr. Osborn posed the question, should we help them or rob them. They apparently decided to do the latter. It was Osborn who got out of the truck first and it was Osborn who suggested to Dale Moore that they get in. According to Teel, Osborn helped drag Mrs. Ditmars out of the truck. Teel said, stated, we all stabbed him and that this whole matter had been Osborn's idea. He referred to it as Tom's at the--apparently Osborn was going by the name of Timothy at the time. According to Terry Lee Green, it was Osborn again who started the stabbing of Dale Moore and it was Osborn who turned the vehicle around to go back and get Moore's mother in the early part. He also agreed that Osborn had gotten out first and had suggested to Dale Moore that he get in. At our last, not our last proceeding but at another proceeding Mr. Osborn raised the issue of a plea of not guilty by mental illness. He was sent to the state hospital. According to their report the accused does not have a mental illness or deficiency. The accused does not, as a result of mental illness or deficiency lack capacity to comprehend his position, to understand the nature and object of the proceedings against him and conduct his defense in a rational manner and to cooperate with his counsel to the end of any available defense may be interposed. The state hospital also found that at the time of the alleged criminal conduct he did not, as a result of mental illness or deficiency, lack substantial capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law. I suppose the only other thing to add, Your Honor, is that the young man that he referred to in Oregon has not been heard from since that time. His guitar was pawned in Oregon and the woman he was traveling with, Denise Pilot (phonetic interpretation), related that she had not seen him and that he had just seemed to have stopped riding with them at that point in Oregon. That was prior to the time that Green and Hopkins joined them.

THE COURT: You don't have to answer this question, Mr. Osborn, but what about that man in Oregon?

MR. OSBORN: What do you mean, sir, what about him?

THE COURT: About what the prosecutor just said, he hasn't been seen or heard from since. You said you barely hit him. Again, I'm telling you, you don't have to answer if you don't want to.

MR. OSBORN: Excuse my expression for saying it, sir, I kicked his ass and left him sitting there, simple as that.

THE COURT: You didn't go any further than that?

MR. OSBORN: No, sir.

THE COURT: Mr. Munker, do you or the defendant have anything to say in his behalf?

MR. MUNKER: Not at this time, Your Honor. I'd ask that he sign the, this petition in open court. I'll date it today.

THE COURT: All right, the Court finds--

MR. MUNKER: Do you have any further questions, Your Honor?

THE COURT: What?

MR. MUNKER: I say, do you have any further questions, Your Honor?

THE COURT: I don't have any further questions on this particular matter.

The Court finds that the defendant is alert, not under the influence of alcohol or drugs nor suffering from any mental defect which could affect his ability to understand these proceedings and is competent to enter a plea of guilty. The plea is knowingly and voluntarily made after consultation with competent counsel, without any improper inducement or conditions, and with an understanding of the charges and direct consequences.

There is a factual basis for the guilty plea which the Court accepts and I'm also going to sign that document now, too. You did sign this petition, Mr. Osborn?

MR. OSBORN: Yes, sir.

THE COURT: All right. I'm now going to ask you--

MR. MUNKER: Judge, could I say one thing in regard to the Sweetwater County case?

THE COURT: What?

MR. MUNKER: I say, could I say one thing in regard to the Sweetwater County case?

THE COURT: Yes, go ahead.

MR. MUNKER: In regard to the facts that have been detailed to me, the prosecution has made their file open and available to me, I've made copies of it available to Mr. Osborn, I've talked to Mr. Osborn about it. He's detailed today in open court, I'd suspect, some things that he hadn't told me in the past. The factual basis that I have obtained from him corresponds to what the prosecution has given me but, nevertheless, in light of this recent Supreme Court opinion, unless they could establish any activity as a principle in this case, I'm of the opinion that the death penalty would have been inapplicable in Sweetwater County. With that in mind, why, I ask and the prosecution did amend their counts to remove the possibility of the imposition of that penalty in my opinion from the Court. That is, the way the case is charged and is factually related, it would remove the premeditated principle aspect of the case. And it is my belief that that's exactly what he's pleading to and with that understanding in mind, that's what we've prepared, Judge.

MR. REESE: Your Honor, the State has not alleged as to the Sweetwater County charges, aggravating circumstances. Those were in fact, the notice was filed by Uinta County on that. However, I'm concerned that the Court does accept the defendant's plea on those charges prior to any further proceedings on the Uinta County charges.

THE COURT: I just accepted his plea. All right. Now, then, I'm going to ask you how you plead on the charges filed against you in Uinta County. How do you plead to Count I, conspiracy, guilty or not guilty?

MR. OSBORN: Guilty, sir.

THE COURT: How do you plead to Count II, aggravated robbery?

MR. OSBORN: Guilty, sir.

THE COURT: And Count III, murder in the first degree?

MR. OSBORN: Guilty, sir.

THE COURT: Or in the perpetration of an aggravated robbery killed another human being. Okay, again, before I can accept that plea I've got to find out if you are pleading knowingly and intelligently and the only way I can find that out, as before, is for you to tell me about it. I'm going to put you under oath again since this is separate from the last one.

MR. MUNKER: Judge, before we do that, I would ask that the record be clear as to the waiver of venue and the finding of competency on Uinta County. I'd ask that--

THE COURT: We've already asked him if he waived venue; I think he already has.

MR. MUNKER: Okay, all right. I just wanted--

THE COURT: I accept his waiver and I find that on the basis of the report issued by the Wyoming State Hospital that he's competent to stand trial if he wants a trial. He's competent to proceed as a matter of fact. As a matter of fact, on the 12th day of August I signed an order of determination and finding of competency.

MR. MUNKER: I just wanted to make sure that that pertains to Uinta County.

MR. SMITH: The order as it is written, Your Honor, does not reflect a finding of competency on the Uinta County charges. The State would move that that order be amended to reflect the Uinta County charges as well and the Court will be provided with an adidtional copy of the order to reflect that.

THE COURT: You want to file one of your own?

MR. SMITH: Yes, Your Honor, I prefer that.

THE COURT: Rather than amending this?

MR. SMITH: Yes, Your Honor, I prefer to file one.

THE COURT: All right; I'll make such a finding of competency as to what happened in Uinta County. Okay, raise your right hand again.

(WHEREUPON, the defendant, Kevin Winston Osborn, was sworn to truthfulness, after which the following was had:)

THE COURT: Okay, let's go back to Evanston. Tell us about that, what did you do over there, May the 14th?

MR. OSBORN: Terry Green, myself, Miss Hopkins and Willard Teel stopped at the Dunmar Motel. Miss Hopkins went inside to register for a room with the credit card I was telling you about that came from the purse that was snatched. While she was inside registering for a room a gentleman was walking up the driveway, staggering. Apparently he was intoxicated pretty heavy. So the subject come up to rob him because this town, Evanston, was supposed to be a boom town, oil field, and people make good money. So we was registered in room 555 and he was registered in room 589. Miss Hopkins called him, posing as a prostitute, and asked him would he like to have company and he stated, I guess, yes, 'cause I wasn't on the phone, I didn't really, I didn't hear the conversation between him and her, just what she said. So she went over to his room. I followed her over to his room to make sure exactly where the room was at. I come back. When I got back we proceeded to tear up a pillowcase into strips so we could use them to tie the man's hands and feet. A few seconds later we got a phone call from Miss Hopkins from the man's room. She says the door's ajar; that was the purpose of her going over there, to leave the door open so we could enter the room. She told us the door was ajar and that everything was ready if we were. So we left and we went over there; that was myself, Terry Green, and Mr. Teel. When we got there Terry Green entered the room first, Mr. Teel went in the room and I entered the room. The room was dark, the lights wasn't on. So I reached up and I turned on the light. When I reached over and turned on the lights I walked over to Mr. O'Briant who was sitting on the bed naked waist down, and I asked him what you doing with my old lady and I slapped him. When I slapped him he laid back on the bed and I put a knife at his throat. While I stood there with a knife at his throat, Terry Green tied his hands, Willard Teel tied his feet and Miss Hopkins went through his wallet. After we got through that we had to knock him unconcious where he couldn't get to a phone to report us. So Terry Green proceeded with beating him with his fists. He couldn't knock him out so I took the boot, Mr. O'Briant's boot, and I hit him twice in the head and it knocked him unconcious. We turned out the lights and we left, went back to our room, got into the U-haul truck and proceeded down the interstate.

THE COURT: You hit him twice with the boot. You must have hit him pretty hard, it killed him, didn't it?

MR. OSBORN: Yes, sir.

THE COURT: How hard did you hit him?

MR. OSBORN: I have no idea, sir, apparently hard enough to kill him.

THE COURT: Why did you have to hit him? He was tied up.

MR. OSBORN: He could have worked his way loose, I guess. I didn't mean to hit him hard enough to kill him; I just wanted to knock him unconcious.

THE COURT: But you did it while you were trying to rob him.

MR. OSBORN: No, sir, did it after we robbed him.

THE COURT: All part of the same act, wasn't it?

MR. OSBORN: Yes, sir.

THE COURT: Didn't you have any compunction about it?

MR. OSBORN: I was drunk at the time. People has nerves when they are drunk, I guess.

THE COURT: How much money did you get from him?

MR. OSBORN: I think it was $58.00, sir.

THE COURT: $58.20, wasn't it?

MR. OSBORN: Yes, sir.

THE COURT: A man's life for $58.20. You left him in his room?

MR. OSBORN: Yes, sir.

THE COURT: And you just took off?

MR. OSBORN: Yes, sir.

THE COURT: I'm not going to go into all the other things I asked you about, about your age and your education, your family and all that sort of thing because you already testified to that and there's no use belaboring the point, and it will be part of this record anyway.

Mr. Smith, what do you have to say about this defendant and his record, if anything?

MR. SMITH: The defendant's record, as indicated by Mr. Reese, is exactly as we've found it. With the evidence gathered in the Uinta County case, we feel that four individuals, Ellen Hopkins, Terry Green, Willard Teel, Kevin Winston Osborn, checked into the Dunmar Motel on the night of May 14, 1982 using a fraudulent name and stolen credit card. Jimmy Ray O'Briant had evidently stumbled up the hill in a very intoxicated manner, and the plan was formulated to rob him at that time. Kevin Osborn went into the lobby of the Dunmar Inn, received information regarding a room number in which Jimmy Ray O'Briant was to later be killed. He--

THE COURT: Give me that again.

MR. SMITH: Ellen Duncan Hopkins was checking into the motel. She engaged in conversation with Jimmy Ray O'Briant.

THE COURT: He told her the room number?

MR. SMITH: No.

THE COURT: That's what I'm curious about.

MR. SMITH: Evidently Kevin Osborn went into the motel room after both parties had check in, checked in, and obtained the information himself.

THE COURT: How could he, he didn't know the man's name?

MR. SMITH: I'm not sure, Your Honor. The register clerk indicates she did not voluntarily give that information out. But anyway, it was determined by Kevin Osborn that

Jimmy Ray was in room 589 and upon their checking into the room 555, a phone call was placed to room 589 and arrangements were made by Ellen Duncan Hopkins to get into Mr. O'Briant's room, at which time he would be robbed. The story as related by Mr. Osborn is exactly as the evidence would indicate it. There are, there were blood splatters found on the roof of the room indicating a blow of high velocity throwing those blood splatters on the roof. The blood did in fact match up with that of Jimmy Ray O'Briant. The next morning Jimmy Ray O'Briant was found unconcious and near death in that motel room. He was taken immediately to the Uinta County Hospital where he was transported to University of Utah Medical Center. He remained in critical condition until July 30, 1982, on which he died. The certificate of death indicates the immediate cause of death as being bronchial pneumonia due, or as a consequence of, cranial cerebral injuries. In other words, a severe blow to the head. The autopsy reports indicate that a blow to the right temporal lobe approximately the size of the heel of a boot was the immediate cause of death to Jimmy Ray O'Briant.

THE COURT: How did you get the room number, Mr. Osborn, how'd you find out what room this man was in?

MR. OSBORN: I went inside the Dunmar Motel and got it, sir.

THE COURT: You got what?

MR. OSBORN: I went inside the Dunmar Motel where you register for a room and got it.

THE COURT: They told you?

MR. OSBORN: Yes, sir.

THE COURT: Well, how did you know what to ask for, did you know the guy's name?

MR. OSBORN: No, sir.

THE COURT: Then how did you get it?

MR. OSBORN: I asked them what was the man's room number that just left that was drunk.

THE COURT: I see, you were right after him then?

MR. OSBORN: Yes, sir.

THE COURT: Mr. Munker, do you or the defendant have anything to say in his behalf?

MR. MUNKER: Your Honor, regarding the Uinta County case, I have prepared a petition. Might I read it, Your Honor?

THE COURT: You might.

MR. MUNKER: The State of Wyoming versus Kevin Winston Osborn. Could I have the case number of Uinta County?

THE COURT: 4287.

MR. MUNKER: This is a Petition to Enter a Plea of Guilty.

The defendant represents to the Court:

(1) My full true name is Kevin Winston Osborn. My date birth is November 3, 1956. I am 25 years of age. I

have gone to school up to and including the eighth grade and have obtained a G.E.D. I request that all proceedings against me be in my true name. Osborn is spelled O-S-B-O-R-N.

(2) I am represented by Leonard D. Munker, State Public Defender, Cheyenne, Wyoming.

(3) I received a copy of the information before being called upon to plead. I read the information and have discussed it with my lawyer. I fully understand every charge made against me, and have had the opportunity to propound questions to the Court, that is, to Judge Soulè, at the preliminary, and have been provided a brief on the elements of felony murder, that I have had time to deliberate on my actions and have knowingly and voluntarily, with the understanding of the charges against me, waived my right to a preliminary hearing.

(4) I have discussed with my lawyer all the facts and circumstances known to me about the charges made against me in the information. I believe that my lawyer is fully informed on all such matters.

(5) I know that the Court must be satisfied that there is a factual basis for a plea of guilty before my plea can be accepted. I represent to the Court that I did the following acts in connection with the charges made against me in the counts:

Count I

On May 14, 1982, in the City of Evanston, County of Uinta, State of Wyoming, I conspired, acted, and agreed with Willard Eugene Teel, Ellen Duncan Hopkins, and Terry Lee Green, to commit the crime of aggravated robbery in violation of Section 6-4-402, 1977 W.S.

Count II

I, with others, forcibly and feloniously took money in the amount of $58.20, a pair of cowboy boots, and a pocket knife from Jimmy Ray O'Briant, by putting him in fear by use of force (exhibiting a knife) in the commission of robbery.

Count III

While in the perpetration of the aggravated robbery, I acted as a principal and in concert with others in assaulting Jimmy Ray O'Briant causing his death in violation of Section 6-4-101, 1977 W.S.

(6) My lawyer has counseled and advised me on the nature of each charge, on all lesser included charges, and on all possible defenses that I might have in this case; that it is his opinion that the death penalty is applicable, I say is applicable, to the facts in this case based upon the Supreme Court's opinion, Enmund v. Florida, decided July 2, 1982.

(7) I know that I have the right to plead not guilty to any offense charged against me. If I plead not guilty I know the constitution guarantees me (a) the right to a speedy and public trial by a jury; (b) at that trial, and at all stages of the proceedings, the right to the assistance of a lawyer; (c) the right to see and hear all witnesses called to testify against me, and the right to cross-examine those witnesses; (d) the right to use the power and process of the Court to compel the production of any evidence, including the attendance of any witnesses in my favor; and (e) the right not to be compelled to incriminate myself by taking the witness stand; and if I do not take the witness stand, no inference of guilt may be drawn from such failure.

(8) I know that if I plead guilty, I am thereby waiving my right to a trial, and that there will be no further trial of any kind, either before a Court or jury; and further, I realize the Court may impose the same punishment as if I had pleaded not guilty, stood trial, and been convicted by a jury. I am further advised that my plea of guilty waives all nonjurisdictional defects and the possibility of habeas corpus review in the Federal Courts.

(9) I know that if I plead guilty, the Court will ask me questions about the offense(s) to which I have pleaded, and since I will be answering these questions under oath, on the record, and in the presence of my lawyer, that my answers may later be used against me in a prosecution for perjury or false statement.

(10) My lawyer informed me that the plea of guilty could subject me to a maximum punishment which, as provided by law, is five to fifty years on count I, five to fifty years on count II, punishment by death or life imprisonment, according to law, on count III.

(11) I declare that no law enforcement officer or agent, prosecutor or the Court, or my own counsel has made any promises, suggestions or inducement in an effort to obtain my plea of guilty; that at my request my

counsel has acted as directed, that I knowingly waive my right to trial and that I request the maximum sentence be imposed for the offenses that I have committed.

I know that the sentence I will receive is solely a matter within the control of the Court. I do not request leniency, and I am prepared to accept the maximum punishment permitted by law which the Court sees fit to impose.

(12) My plea of guilty is made after consulting with my counsel and my desire to expedite this matter, and request the maximum permissible punishment. The prosecution, based upon my plea, is requested and agrees to seek the imposition of the death penalty. I have been advised that the Court may accept or reject this agreement. In the event the Court rejects this agreement, I understand that I will have the opportunity to withdraw my guilty plea.

(13) I believe that my lawyer has done all that anyone could do to counsel and assist me, and I am satisfied with the advice and help he has given me.

(14) I know that the Court will not permit anyone to plead guilty who maintains he is innocent and, with that in mind, and because I am guilty and do not believe I am innocent, I wish to plead guilty and respectfully request the Court to accept my plea of guilty.

(15) My mind is clear. I am not under the influence of alcohol or drugs, and I am not under a doctor's care.

I'd like to again say to the Court that it appears that he is taking some medication. He is taking 25 milligrams of Librium four times a day for a total of 100 milligrams and is taking Percodan four times a day, I think for a total of 1 grain. And again, I have checked with regard to the dosage that he is taking, Your Honor, and it would appear that medical advice that I have obtained in that regard is that he could function, has a clear mind and he has indicated that today.

I acknowledge I have been examined by the Wyoming State Hospital in July of this year, that I have read the reports and the conclusions therein.

The report of that hospital by the way, Your Honor, has been made available to him. He has had an opportunity to review and go over that report.

Further, I have been examined and counseled by Dr. Brian Miracle in July and August of this year.

He was examined and Dr. Miracle talked with him yesterday afternoon.

(16) I have been examined on at least two occasions by institutions treating mental illnesses. I have never been adjudicated mentally incompetent. No psychiatrist, physician or psychologist has ever found me to be mentally ill. I know of no reason why my mental competence at the time of the commission of the alleged offense(s), or at the present time, should be questioned.

(17) I offer my plea of guilty freely and voluntarily, and further state that my plea of guilty is not the result of any force or threats against me, or of any promises made to me other than those noted in this petition. I further offer my plea of guilty with full understanding of all the matters set forth in the information and in this petition, and in the certificate of my attorney which is attached to this petition.

(18) I understand that the acts charged in the information occurred in the City of Evanston, County of Uinta, State of Wyoming, and that this case could be prosecuted in that county. With this understanding, I request the case be prosecuted in Sweetwater County and consolidated with the offense(s) charged in that county. I acknowledge my right to have separate trials in this matter and I knowingly, voluntarily, and understandingly waive venue and separate trials and request that these cases be consolidated for simultaneous disposition.

(19) I swear that I have read, understood, and discussed with my attorney, each and every part of this Petition to Plead Guilty, and that the answers which appear in every part of this petition are true and correct.

It is to be signed by Mr. Osborn. I'll read my certificate in this case, Your Honor.

CERTIFICATE OF COUNSEL

The undersigned, Leonard D. Munker, State Public Defender, Cheyenne, Wyoming, as lawyer and counselor for the defendant, hereby certifies:

(1) I have read and fully explained to the Defendant the allegations contained in the information in this case.

(2) To the best of my knowledge and belief, the statements, representations and declarations made by the defendant in the foregoing petition are in all respects accurate and true.

(3) The defendant is in accord with my understanding of

the facts presented to me by the prosecution and related to me by the defendant and that the plea is motivated by the defendant's desire to avoid a trial, obtain quick disposition of his case, and to seek the death penalty. He desires the maximum penalty and asks that I make this recommendation to the Court. The plea is knowingly, voluntarily, and accurate and meets the standards as I understand them. Further, the alternatives available to Kevin Winston Osborn have been outlined and those considerations he deemed important are set forth in this Petition to Plead Guilty. The trial judge has not been a participant in any plea discussions and the defendant has been advised that the Court is not bound in any way in the defendant's Petition to Plead Guilty or recommendations made by the prosecution.

(4) In my opinion, the defendant's waiver of his preliminary hearing in open court was voluntary and understandingly made and I recommend to the Court that the waiver be accepted.

(5) In the exercise of my independent professional judgment, I have advised my client that if the prosecution sought the death penalty on the offense(s) charged in Uinta County, that there was a possible factual basis for the imposition of the sentence of death. I have further advised my client that the death penalty requires a separate hearing with the presentation of evidence of mitigating and aggravating circumstances and that in the event the aggravating circumstances outweighed those mitigating circumstances, the Court could impose a death penalty. I have further advised my client that there is mandatory review of the imposition of the death sentence which, in my opinion, cannot be waived.

(6) In the execution of my independent professional judgment, I have advised my client that I did not think that a death penalty would be possible on the information filed in Sweetwater County. I have reviewed the Code of Professional Responsibility, Canon 5, 6, and 7, and believe those Canons to be in conflict with the Supreme Court's ruling of Faretta v. California, 422 U.S. 806, as it pertains to this case and the death penalty statutes of the State of Wyoming.

(7) It is my opinion that the standards set forth in the Supreme Court's opinion of Dusky v. United States, 362 U.S. 402 (1959), have been met with this defendant that he is oriented to time, place, and event and has

sufficient present ability to consult with his lawyer with a reasonable degree of understanding and has a rational and factual understanding of the proceedings against him.

Signed by me in open court in the presence of the defendant above named and after full discussion of the contents of this certificate with the defendant, this, and I'm signing it, Your Honor, the 23rd day of August, 1982.

THE COURT: Has Mr. Osborn signed it?

MR. MUNKER: Your Honor, I'd ask that you make an inquiry, if he agrees with everything that's in that petition.

THE COURT: Do you agree to everything that's in that petition?

MR. OSBORN: Yes, sir, Your Honor.

THE COURT: All right. Why don't you sign it? (Mr. Osborn signing document.) Inasmuch as I've already questioned Mr. Osborn about the crime in Lincoln County I'm not going to question him further.

MR. MUNKER: It's Uinta County, Your Honor.

THE COURT: Uinta County, excuse me. The Court finds the defendant is alert, not under the influence of alcohol or drugs, nor suffering from any mental defect which could affect his ability to understand these proceedings and is competent to enter a plea of guilty. The plea is knowingly and voluntarily made after consultation with competent counsel, without any improper inducement or conditions and with an understanding of the charges and direct consequences. There is a factual basis for the guilty plea which the Court accepts. I want to point out one thing that in both of these, Petition to Enter a Plea of Guilty and Order Entering Plea, it is stated that there will be no further trial of any kind if he pleads guilty. However, Mr. Munker has already mentioned that. There will be further proceedings, naturally, as you pointed out, to determine whether there are sufficient aggravating circumstances that override the mitigating circumstances which we'll set for hearing at a later time and I'd like to talk with counsel after we get through in here to--maybe we can arrange a time for that. In the interim the defendant will be remanded to the custody of the sheriff to be held without bail and may be transported to the Wyoming State Penitentiary pending the hearing on the aggravating and mitigating circumstances. Is there anything further?

MR. MUNKER: Judge, there's one other thing. The defendant's requested that he be able to make any statements to the news media. I asked him prior to this hearing that he not do so until we had concluded in court. We are concluded, I have no objection. He has a right to do it at this point if he desires and if he'd like to talk with the news media I just want to make it clear on the record that I have no objection

at this point if the Court has none.

THE COURT: Do you want to talk to the news media?

MR. OSBORN: Yes, sir.

THE COURT: Where do you want to talk to them?

MR. OSBORN: Pardon me, sir?

THE COURT: Where do you want to talk with them, right here?

MR. OSBORN: In privacy if I can, sir.

THE COURT: In private? All right with me. Do you have any objections?

MR. REESE: Well, Your Honor, we'd like the sheriff's deputies present at that time.

THE COURT: Well, I think that would be fitting.

MR. OSBORN: What was that, sir?

THE COURT: You'll have a sheriff's deputy there. It's a matter of protection.

MR. MUNKER: We can work that out, I think, Judge, we'll work it out. We can put him in a room where he'd be confined confidentially with them if he wants that.

THE COURT: That's your only reason, wasn't it?

MR. REESE: Yes, Your Honor, I did have another question, I guess. Is the Court planning to sentence on the Sweetwater County charges at this time or asking for a presentence investigation?

MR. MUNKER: Judge, I'd ask that the, as to that, that that be assembled and it could be handled all at one time.

THE COURT: I don't see any need to sentence him right now on the Sweetwater County charges unless you have some compelling reason.

MR. REESE: It was more of a question, Your Honor, then the other thing is whether the Court desires a presentence investigation.

THE COURT: It's kind of a pointless thing. Do you want a presentence investigation?

MR. MUNKER: We I think for the factual data that would be available, Your Honor, it might be appropriate to have that so the Court would have it in the event that there is something that conceivably we've missed.

THE COURT: I'll agree. I had told the probation agents that it wouldn't be necessary but I think it would be safer under the circumstances to have one. Mr. Reese, will you please tell them to have a present investigation?

MR. REESE: Yes, Your Honor.

THE COURT: And you don't mind whether he discusses the crime with the presentence, with the probation officer?

MR. MUNKER: Would you discuss the crimes with the probation officer?

MR. OSBORN: I don't care.

MR. MUNKER:

THE COURT: All right. Now, is there anything further to come before the Court?

MR. MUNKER: I have nothing, Your Honor.

THE COURT: Mr. Reese?
MR. REESE: No, Your Honor.
THE COURT: Mr. Smith?
MR. SMITH: Nothing further.
THE COURT: We stand adjourned.
MR. MUNKER: Judge, does the order indicate that he's to go to Rawlins, then be brought back?
THE COURT: Yes, I said that they could send him down there.

CERTIFICATE OF REPORTER

I, SUE P. HANNON, Official Court Reporter for the Third Judicial District Court, do hereby certify that I have examined the record made by APril M. Kastman, such being made by her at the request of the Official Court Reporter with the consent of the Court on the date and at the time shown.

WITNESS MY HAND this 29th day of September, 1982, at the Sweetwater County Courthouse, Green River, Wyoming.

Sue P. Hannon

SUE P. HANNON
Official Court Reporter